UNITED STATES PATENT AND TRADEMARK OFFICE

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10/809,684	03/26/2004	Yang Gi Kim	LT-0055	7870

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>26 March 2004</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-32</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-11 and 13-31</u> is/are rejected.

7) ☒ Claim(s) <u>12 and 32</u> is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>26 March 2004</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☒ All   b) ☐ Some * c) ☐ None of:

      1. ☒ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1.   **Claims 14-26 are directed to non-statutory subject matter.**

Claims 14-19 are limited to *articles including a machine-readable storage medium.* The mediums intended by the applicant apparently include code segments transported over a carrier wave, which is not tangible. See applicant's specification paragraph [52]. Therefore, these claims are non-statutory.

Claims 20-26 are limited to *digital audio systems.* These claims are apparently drafted under 35 USC 112, sixth paragraph ("means for..."). Moreover, every single claimed means is apparently software—i.e., instructions for execution—and not a tangible hardware module. See applicant's specification paragraphs [35], [51] and [52]. Therefore, these claims are non-statutory.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   **Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by the Replay Gain website (last updated 10 October 2001).**

Claim 1 is limited to *a method for recording/managing audio level information*. In

rejecting this claim reference is made to the Replay Gain website. Just briefly, the

Replay Gain proposal sets out a simple way of calculating and representing the ideal

replay gain for every track and album. The replay gain is stored in the meta data

portion of an MP3 file, also known as the ID3v2 tag. See the *Introduction* page. On the

Replay Gain Data Format page it is seen that each replay gain adjustment value is

stored along with a name code in said ID3v2 tag. The name code corresponds to the

first information area while the gain adjustment value corresponds to the *second*

information area. The MP3 associated with the tag values corresponds to *an audio data*

area. The inherently present process required to create the above mentioned file areas

corresponds to the claimed *partitioning step*. The replay gain adjustment value stored is

actually the difference between the level of the audio data and a standard volume of 83

dB. See the Calibration page. Recording this difference in the ID3v2 tag corresponds

to *recording an audio level information in said second information area of an audio file,*

said audio level information indicating an output level of audio data to be reproduced.

Therefore, the Replay Gain website anticipates all limitations of the claim.

Claim 2 is limited to *the method of claim 1*, as covered by the Replay Gain

website. As indicated on the Replay Gain Data Format page, the name code

information indicates whether a replay gain adjustment value has been set/recorded.

To wit, "if space has been reserved for the Replay Gain in the file header, but no replay

gain calculation has been carried out, then all bits (including the Name code) may be

zero." Therefore, the Replay Gain website anticipates all limitations of the claim.

Claim 3 is limited to *the method of claim 1*, as covered by the Replay Gain website. The Replay Gain File Format page indicates that Replay Gain is usable with, at least, MP3 and wave-format audio files. Therefore, the Replay Gain website makes anticipates all limitations of the claim.

Claim 4 is limited to *the method of claim 1*, as covered by the Replay Gain website. The difference value stored is based on an average level of said audio file. In fact, a root-mean-square value. See the Calculation and RMS Energy pages. Therefore, the Replay Gain website anticipates all limitations of the claim.

Claim 5 is limited to *the method of claim 1*, as covered by the Replay Gain website. As seen on the Replay Gain Data Format page, the name code corresponding to the first area is clearly part of *header information* for the subsequent *tag information area* comprising the replay gain adjustment. Therefore, the Replay Gain website anticipates all limitations of the claim.

Claim 6 is limited to *a method*. In contrast to claim 1, this claim focuses primarily on the player requirements of adjusting the level of audio data. The player of Replay Gain performs analogously. To wit, the player—e.g., Winamp—inherently begins by *receiving* a stored MP3. From there the player reads the replay gain value, which corresponds to *checking audio level information recorded in the received audio file*, and scales the audio data as appropriate—which corresponds to *adjusting an output level of the audio data to be reproduced of said received audio file, on the basis of the checked audio level information*. See the Outline of Player Requirements page. Therefore, the Replay Gain website anticipates all limitations of the claim.

    Claim 7 is limited to *the method of claim 6*, as covered by the Replay Gain website. As seen on the Replay Gain Data Format page, the name code corresponding to the first area is clearly part of header information for the subsequent *tag information* comprising the replay gain adjustment. Therefore, the Replay Gain website anticipates all limitations of the claim.

    Claim 8 is limited to *the method of claim 7*, as covered by the Replay Gain website. The Replay Gain Data Format page indicates how to proceed in the event that the name code indicates that no replay gain adjustment is to take place or an invalid name code is set, clearly indicating that reply gain adjustment values are only recovered when the name code indicates that *said audio level information was recorded*. Therefore, the Replay Gain website anticipates all limitations of the claim.

    Claim 9 is limited to *the method of claim 8*, as covered by the Replay Gain website. Just briefly, the Replay Gain proposal sets out a simple way of calculating and representing the ideal replay gain for every track and album. The replay gain is stored in the meta data portion of an MP3 file, also known as the ID3v2 tag. See the *Introduction* page. On the Replay Gain Data Format page it is seen that each replay gain adjustment value is stored along with a name code in said ID3v2 tag. The name code corresponds to the *first information area* while the gain adjustment value corresponds to the *second information area*. The MP3 associated with the tag values corresponds to *an audio data area*. The inherently present process required to create the above mentioned file areas corresponds to the claimed *partitioning step*. The replay gain adjustment value stored is actually the difference between the level of the audio

data and a standard volume of 83 dB. See the Calibration page. Recording this

difference in the ID3v2 tag corresponds to *recording an audio level information in said*

second information area of an audio file, said audio level information indicating an

output level of audio data to be reproduced. Therefore, the Replay Gain website

anticipates all limitations of the claim.

Claim 10 is limited to *the method of claim 7*, as covered by the Replay Gain

website. In addition to including a replay gain adjustment value indicating the difference

in levels between the stored audio file and a predetermined standard—e.g., 83 dB—a

peak value is stored. This peak value is also considered part of the *checked audio level*

information. See *what to store* on the Replay Gain Data Format page. This peak value

is compared to a digital full-scale value to determine if clipping will occur. Hard

clipping/adjustment of the gain is carried out as a result. See the Clipping Prevention

page for a description of how to carry out hard limiting to avoid clipping. Note the digital

full-scale value corresponds to the claimed *predetermined reference level.* Said clipping

prevention page also indicates that a pre-amp gain must be taken into account when

determining the existence of clipping. According to the Outline of Player Requirements

page, a user sets the pre-amp values, which correspond to *an audio volume level set by*

a user. Amplifying and outputting said audio data to be reproduced at the adjusted gain

inherently follows during playback after adjustment to the gain is rendered through

enabling/disabling hard limiting. Therefore, the Replay Gain website anticipates all

limitations of the claim.

Claim 11 is limited to *the method of claim 10*, as covered by the Replay Gain website. When the peak level is below the digital full-scale value, where it had been above on the previous track, the hard limiter will be removed, effectively increasing the gain of an audio amplifier. Conversely, when the peak level is above the digital full-scale value, where it had been below on the previous track, the hard limiter will be inserted, effectively reducing the gain of an audio amplifier. See the Outline of Player Requirements page as well as the Clipping Prevention page. Therefore, the Replay Gain website anticipates all limitations of the claim.

3.   **Claims 20 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by the Replay Gain website in view of the Winamp v2.6 screenshots (v2.6 released 11 February 2000, screenshots taken 05 August 2007).**

Claim 20 is limited to *a digital audio system*. The claimed *recording means for storing a plurality of audio files* is inherent to the operation of Winamp v2.6 implementing Replay Gain as described on the Replay Gain website. See the Player Requirements Outline page. Note that it is not required that the recording means actually store a plurality of audio files, but that it is capable of doing so; such a requirement follows from the computer running Winamp since it requires enough rewritable storage for Winamp, Replay Gain and an operating system. It is also required that a *conversion means for converting an audio file read from said recording means into audio data to be reproduced* exists in the Winamp player to decode MP3 files. Moreover, the Replay Gain adjustment has to occur on a set of amplitude data in order to calculate the RMS value of the song at 50ms intervals. See the RMS Energy

page. *Searching said recording means* occurs in accordance with the search window

shown in page 3 of the Winamp v2.6 screenshots. The *checking audio level information*

recorded in the searched audio file and adjusting an output level of audio data to be

reproduced of said searched audio file according to the checked audio level information

and a user set audio volume level occurs in accordance with the disclosure of the

Replay Gain website; specifically, the Outline of Player Requirements page indicates

that said audio level information is checked and used to adjust a volume. Moreover,

user set pre-amp data is consulted to make further level adjustments. Therefore, the

Replay Gain website in view of the Winamp v2.6 screenshots anticipates all limitations

of the claim.

Claim 23 is limited to *the system of claim 20*, as covered by the Replay Gain

website in view of the Winamp v2.6 screenshots. As seen on the Replay Gain Data

Format page, the name code corresponding to the first area is clearly part of *header*

information for the subsequent *tag information area* comprising the replay gain

adjustment. Therefore, the Replay Gain website anticipates all limitations of the claim.

Claim 24 is limited to *the system of claim 23*, as covered by the Replay Gain

website in view of the Winamp v2.6 screenshots. The Replay Gain Data Format page

indicates that the name code is first checked to determine if a replay gain value is set.

This corresponds to *first check said identification information*. The space reserved for a

replay gain value is then only checked if the name code value is valid and not 000. This

corresponds to *selectively check said audio level information recorded in said tag*

information of said searched audio file on the basis of the checked identification

information. Therefore, the Replay Gain website anticipates all limitations of the claim.

Claim 25 is limited to *the system of claim 20*, as covered by the Replay Gain

website in view of the Winamp v2.6 screenshots. In addition to including a replay gain

adjustment value indicating the difference in levels between the stored audio file and a

predetermined standard—e.g., 83 dB—a peak value is stored. This peak value is also

considered part of the *checked audio level information.* See *what to store* on the

Replay Gain Data Format page. This peak value is compared to a digital full-scale

value to determine if clipping will occur. Hard clipping/adjustment of the gain is carried

out as a result. See the Clipping Prevention page for a description of how to carry out

hard limiting to avoid clipping. Note the digital full-scale value corresponds to the

claimed *predetermined reference level.* Said clipping prevention page also indicates

that a pre-amp gain must be taken into account when determining the existence of

clipping. According to the Outline of Player Requirements page, a user sets the pre-

amp values, which correspond to *a system audio volume level.* Therefore, the Replay

gain website in view of the Winamp v2.6 screenshots anticipates all limitations of the

claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

4.   **Claims 13-19, 21, 22 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable**

over the Replay Gain website in view of screenshots taken from Winamp V2.6.

Claim 13 is limited to *the method of claim 6*, as covered by the Replay Gain

website. As seen on the Outline of Player Requirements page, Winamp is used to

playback MP3 files. Winamp v2.6 released on 11 February 2000 includes the ability to

search the storage devices of a computer for MP3 files and load them into the player for

playback. See pages 2 and 3 of the Winamp screenshots. Moreover, It is submitted

that since Winamp was already disclosed for use by the Replay Gain website the

features integral with said player are to be taken as inherent to the Replay Gain

website. It is noted that it is neither necessary that Winamp run on a portable terminal,

portable computer or personal computer nor that the recording medium be a memory,

optical disc or hard disk nor that the recording memory store a plurality of audio files;

however, these deficiencies are overcome by an obvious modification.

In particular, the examiner takes Official Notice of the fact that memories, optical

discs, hard disks, portable terminals, portable computers and personal computers were

well known at the time of the invention for use in storing a plurality of audio files and

running music playback applications.

Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention to search one of the cited recording mediums in one of the recited

computer devices since such elements were notoriously well-known and available for

the claimed purpose.

Claim 14 is limited to *an article including a machine-readable storage medium containing instructions fro adjusting an output level of audio data*. Since Replay Gain is software, as evidenced by the Matlab reference code seen on the MATLAB files page, it follows that said machine-readable storage medium exists to store the Replay Gain software. The remaining limitations were treated supra apropos the rejections of claims 6 and 13. Therefore, the Replay Gain website in view of the Winamp v2.6 screenshots makes obvious all limitations of the claim.

Claim 15 is limited to *article of claim 14*, as covered by the Replay Gain website in view of the Winamp v2.6 screenshots. This claim recites essentially the same limitations as claim 13 and is rejected for the same reasons. Therefore, the Replay Gain website in view of the Winamp v2.6 screenshots makes obvious all limitations of the claim.

Claim 16 is limited to *the article of claim 14*, as covered by the Replay Gain website in view of the Winamp v2.6 screenshots. As seen on the Replay Gain Data Format page, the name code corresponding to the first area is clearly part of header information for the subsequent *tag information* area comprising the replay gain adjustment/audio level information. Therefore, the Replay Gain website in view of the Winamp v2.6 screenshots makes obvious all limitations of the claim.

Claim 17 is limited to *the article of claim 16*, as covered by the Replay Gain website in view of the Winamp v2.6 screenshots. The Replay Gain Data Format page indicates that the name code is first checked to determine if a replay gain value is set. This corresponds to checking *identification information from header information of said*

searched audio file, said identification information indicating whether said audio level information has been recorded in said tag information of said searched audio file. The space reserved for a replay gain value is then only checked if the name code value is valid and not 000. This corresponds to *optionally checking said audio level information recorded in said tag information of said searched audio file on the basis of the checked identification information.* Therefore, the Replay Gain website in view of the Winamp v2.6 screenshots makes obvious all limitations of the claim.

Claim 18 is limited to *the article of claim 16*, as covered by the Replay Gain website in view of the Winamp v2.6 screenshots. In addition to including a replay gain adjustment value indicating the difference in levels between the stored audio file and a predetermined standard—e.g., 83 dB—a peak value is stored. This peak value is also considered part of the *checked audio level information.* See *what to store* on the Replay Gain Data Format page. This peak value is compared to a digital full-scale value to determine if clipping will occur. Hard clipping/adjustment of the gain is carried out as a result. See the Clipping Prevention page for a description of how to carry out hard limiting to avoid clipping. Note the digital full-scale value corresponds to the claimed *predetermined reference level.* Said clipping prevention page also indicates that a pre-amp gain must be taken into account when determining the existence of clipping. According to the Outline of Player Requirements page, a user sets the pre-amp values, which correspond to *an audio volume level set by a user. Amplifying and outputting said audio data to be reproduced at the adjusted gain* inherently follows during playback after adjusting a gain of an audio amplifier through hard limiting.

Therefore, the Replay gain website in view of the Winamp v2.6 screenshots makes obvious all limitations of the claim.

Claim 19 is limited to *the article of claim 17*, as covered by the Replay Gain website in view of the Winamp v2.6 screenshots. The claimed partitioning and recording steps have been treated in detail supra apropos the rejection of claim 1 and are rejected for the same reasons. Therefore, the Replay Gain website in view of the Winamp v2.6 screenshots makes obvious all limitations of the claim.

Claim 21 is limited to *the system of claim 20*, as covered by the Replay Gain website in view of the Winamp v2.6 screenshots. The Replay Gain File Format page indicates that Replay Gain is usable with, at least, MP3 and wave-format audio files. The remaining limitations concerning the type of computer the digital audio system "is" are rejected as obvious for the same reasons presented supra apropos the rejection of claim 14. Therefore, the Replay Gain website makes obvious all limitations of the claim.

Claim 22 is limited to *the system of claim 20*, as covered by the Replay Gain website in view of the Winamp v2.6 screenshots. The cited prior art does not disclose *an interface to a personal computer or contents server in order to download said audio files*; however, Official Notice is taken of the fact that downloading music from a second computer or from the Internet-based content server was well known at the time of the invention for sharing and distributing music.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to connect the system disclosed by the Replay Gain website

including Winamp v2.6 to another PC or the Internet for the purpose of downloading

music as doing so was notoriously well-known in the art.

Claim 27 is limited to *an apparatus for adjusting an output level of audio data in a*

digital audio system. The recording medium configured to store a plurality of audio files

including at least two audio files types is not disclosed by the Replay Gain website nor

the Winamp v2.6 screenshots. It is inherent that a recording medium exists, however,

and that Replay Gain supports multiple audio file types. The examiner, again, takes

Official Notice of the fact storing a plurality of audio files of different types was well

known at the time of the invention for the purpose of storing more than one of a user's

favorite songs downloaded from different websites or from friends that choose to use

different types of audio files.

Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention to store a plurality of audio files of different type on the recording

medium required by the Replay Gain website's disclosure as was notoriously well-

known in the art for the purpose mentioned in the immediately preceding paragraph.

The claimed *converter* is necessary to the playback and RMS calculation

performed by the Replay Gain system. See the rejection of claim 20. The *controller*

searches, checks and adjusts in the same manner as claim 20 and is rejected for the

same reasons. Finally, the *amplifier means* must exist to modify the level of the output

songs during playback. Therefore, the Replay Gain website in view of the Winamp v2.6

screenshots makes obvious all limitations of the claim.

Claim 28 is limited to *the apparatus of claim 27*, as covered by the Replay Gain

website in view of the Winamp v2.6 screenshots. Although not disclosed explicitly by

the cited prior art, a speaker must exist for playback audio to be heard; otherwise,

Winamp and Replay Gain would be totally useless. Moreover, the Replay Gain website

indicates that the audio file is, at least, one of an MP3 audio file and a Wave-format

audio file. See the Replay Gain File Format page. Therefore, the Replay Gain website

in view of the Winamp v2.6 screenshots makes obvious all limitations of the claim.

Claim 29 is limited to *the apparatus of claim 27*, as covered by the Replay Gain

website in view of the Winamp v2.6 screenshots. As seen on the Replay Gain Data

Format page, the name code corresponding to the first area is clearly part of header

information for the subsequent *tag information area* comprising the replay gain

adjustment. Therefore, the Replay Gain website in view of the Winamp v2.6

screenshots makes obvious all limitations of the claim.

Claim 30 is limited to *the apparatus of claim 29*, as covered by the Replay Gain

website in view of the Winamp v2.6 screenshots. The Replay Gain Data Format page

indicates that the name code/*header information* is first checked to determine if a replay

gain value is set. This corresponds to *first check said identification information*. The

space reserved for a replay gain value is then only checked if the name code value is

valid and not 000. This corresponds to *check said audio level information recorded in

said tag information of said searched audio file when the checked identification

indicates the audio level information was recorded*. Therefore, the Replay Gain website

in view of the Winamp v2.6 screenshots makes obvious all limitations of the claim.

Claim 31 is limited to *the apparatus of claim 27*, as covered by the Replay Gain

website in view of the Winamp v2.6 screenshots. In addition to including a replay gain

adjustment value indicating the difference in levels between the stored audio file and a

predetermined standard—e.g., 83 dB—a peak value is stored. This peak value is also

considered part of the *checked audio level information*. See *what to store* on the

Replay Gain Data Format page. This peak value is compared to a digital full-scale

value to determine if clipping will occur. Hard clipping/adjustment of the gain is carried

out as a result. See the Clipping Prevention page for a description of how to carry out

hard limiting to avoid clipping. Note the digital full-scale value corresponds to the

claimed *predetermined reference level*. Said clipping prevention page also indicates

that a pre-amp gain must be taken into account when determining the existence of

clipping. According to the Outline of Player Requirements page, a user sets the pre-

amp values, which correspond to *an audio volume level set by a user*. Therefore, the

Replay Gain website in view of the Winamp v2.6 screenshots makes obvious all

limitations of the claim.

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject

matter:

5.   **Claims 12, 26 and 32 are objected to as being dependent upon a rejected base claim, but
        would be allowable if rewritten in independent form including all of the limitations of the
        base claim and any intervening claims.**

Claim 12 is limited to *the method of claim 10*, as covered by the Replay Gain website. There is simply no disclosure of calculating a ratio between the predetermined reference level (83 dB), the current audio file and a next audio file. At most, it can be argued that a first ratio is calculated between the current audio file and the predetermined reference level and that a second ratio is calculated between the next audio file and the predetermined reference level when the logarithmically scaled levels are subtracted prior to storing in the MP3. Thus, claim 12 is allowable over the cited prior art.

Claim 32 is limited to *the apparatus of claim 31*, as covered by the Replay Gain website in view of the Winamp v2.6 screenshots. The predetermined reference level mentioned supra apropos the rejection of claim 31 is a digital full-scale value, not an *average audio level of audio files requested to be played*. Further, it does not clearly follow that an average level would be used to check for clipping as disclosed by the Replay Gain website. Thus, claim 26 is allowable over the cited prior art.
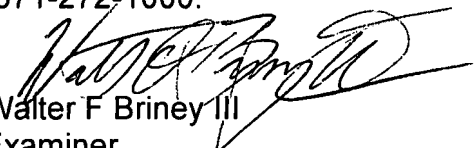
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter F Briney III
Examiner
Art Unit 2615

8/6/07